IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 451 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DUSHYANT BHOJAK

Versus

OFFICER INCHARGE

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Appearance:

MR JM PANCHAL for Petitioner
MR KJ PANCHAL for Petitioner
MR MUKESH R SHAH for Respondent No. 1
MR DN PATEL for Respondent No. 1
MR IM PANDYA for Respondent No. 2

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/02/2002

C.A.V. JUDGEMENT

This Criminal Revision Application has been filed by the petitioner against the order dated 19-9-2001 passed by the learned Sessions Judge, Ahmedabad (Rural) at Ahmedabad in Criminal Misc. Application No.194 of 2001 in Special Case No.11 of 2000 whereby the learned Sessions Judge, while allowing the petition filed by the C.B.I., has cancelled the bail granted to the present petitioner and ordered to take him into judicial custody.

2. The facts in short leading to prefer the present revision are as under:

2.1 A complaint was registered before the C.B.I., S.P.E., Gandhinagar Branch on 12-1-2000 being Case No.RC-1(S)2000-GNR against the present petitioner for the offences punishable under Secs.120-B and 420 of the Indian Penal Code and also under Sec.13(2) read with Sec.13(1)(d) of the Prevention of Corruption Act, 1988 and also under Sec.3(1)(3) of the Indian Wireless Act, 1933 alleging that Shri Dushyant Bhojak, resident of 77, 10th Floor, `B' Block, Konark Towers, Judges Bungalow, Vastrapur, Ahmedabad, had unauthorisedly fitted machinery, equipments disc antenna for the purpose of telecommunication facility for abroad stations. It was also alleged that he had taken 75 DOT telephone lines and 25 telephone lines from a private telephone exchange which were unauthorisedly connected with the system installed at the aforesaid premises and was using satellite services of one Epster Satellite for connecting ISD calls from abroad bypassing the VSNL Gateway thereby making the Department of Telecommunication to suffer huge revenue loss. Pursuant to which, necessary panchnama was drawn by C.B.I. authorities on the same day and petitioner was arrested on 21-1-2000 and was remanded upto 25-1-2000. The petitioner was released on bail by the learned Chief Metropolitan Magistrate, Ahmedabad vide order on 25-1-2000 with certain terms and conditions mentioned therein.

2.2 On 14-1-2000 another complaint being Complaint No.AT/Vigilance/INSP-KNK/2000/6 dated 13-11-2000 was lodged by Shri G.M.Saija, Vigilance Officer against Shri Dushyant Bhojak alleging that again he had illegally diverted 75 telephone lines provided to him by the Telephone Department at 2nd Floor of Nalanda Towers and unauthorisedly using them for making incoming calls to Ahmedabad from USA bypassing VSNL Gateway. Panchnama was drawn there and one envelope of the date 3-2-2000 was

found together with one Split A.C. and it was alleged that petitioner committed breach of the conditions imposed by the learned Magistrate while releasing him on bail. The petitioner surrendered himself before the learned Magistrate and he was released on bail.

2.3 Thereafter, on 22-11-2000 an application was submitted by the investigating officer stating that since the petitioner committed breach of the conditions imposed on him while releasing him on bail, his bail be cancelled. As charge-sheet was submitted, said application was not pressed by the investigating officer and another application for cancellation of bail was preferred being Cri. Misc. Appln. No.194 of 2001 in Special Case No.11 of 2000 before the District and Sessions Judge, Ahmedabad (Rural), Ahmedabad on 30-3-2001. Said application was allowed by the learned Sessions Judge vide order dated 19-9-2001 whereby the bail order granted to the present petitioner was cancelled and he was sent to judicial custody. Hence, the present petition. It may be stated that aforesaid order was suspended for a period of fifteen days.

3. Initially, notice was issued by this Court (Coram: A.L.Dave,J.) vide order dated 3-10-2001 which was made returnable on 12-10-2001 and impugned order dated 19-9-2001 passed by the learned Sessions Judge was suspended till the returnable date.

4. An affidavit-in-reply was filed by Investigating Officer, Mr.Riyaz Ahmed Abdul Sattar Munshi, Police Inspector, CBI, Gandhinagar, Investigating Officer contenting that the petitioner is in habit of committing same type of offences again and again and as he has misused the liberty granted to him while he was released on bail in connection with R.C.Case No.1/S/2000, the present revision application is required to be rejected. It was stated in the said affidavit that though the materials and equipments used in commission of the first offence were in the custody of the C.B.I., the petitioner while on bail has committed the same offence during the period from 12-1-2000 and 6-11-2000 by purchasing new materials/equipments and using the equipments such as Cable System, Pegassus, Disc Antena and Batteries which were not seized by the C.B.I. at the time of drawing the panchnama on 12-1-2000 in respect of first offence by breaking upon the sealed lock and entering the room sealed by the C.B.I. which was detected on 6-11-2000 when a raid was conducted by the officers of Department of Telecommunication and a panchnama was drawn there on that day and a complaint was lodged on 13-11-2000 with

C.B.I., Gandhinagar which was registered as RC-30/S/2000 by drawing panchnama on 14-11-2000. It was further stated that since the second offence was committed connecting two places i.e. Konark Tower and Nalanda Tower, there were two panchnamas. It was further stated that when panchnama with regard to 77 Konark Tower was drawn in respect of the second offence, the door leading to the terrace which was sealed by CBI was found to have been toned. However, seals applied on the rooms and on the lock were intact and when seals were removed, ring of the lock is seen cut first and welded again and the window A.C. was removed and Split A.C. was fixed in that place which was done for reusing the same system for ISD calls from the same room. It was further stated that when panchnama was drawn on 14-11-2000, Pegassus UPS was not there and it was found at Nalanda Tower where the system was working thereby it is proved that Pegassus UPS from the sealed room of Konark Tower was removed for using the same at Nalanda Tower. It was also found that three Car batteries interlinked with smaller UPS were seen used for running the system and the room was seen used by cleaning recently. DP Box was also found to have been manipulated with some new interconnection and a plastic envelope used for counter dak was also found bearing the date 3-10-2000. This shows that room was opened after sealing it and Window A.C., which was in the room, was seen lying on the terrace and window was blocked by wooden planks and new electricity terminal for giving supply to dish antenna was also found on the terrace. It was further stated that all these would clearly show that petitioner had committed breach of the conditions imposed by the learned chief Metropolitan Magistrate vide order dated 25-1-2000 at the time of releasing him on bail. It was further stated that though summons dated 5-12-2000, 7-12-2000 and 21-12-2000 were tried to be served on the petitioner personally at his residence, since he was not available, brother's wife of the petitioner was asked to see that petitioner remains present, but he did not remain present and suddenly, he presented himself on 25-12-2000 being a holiday before the learned Metropolitan Magistrate Court No.12, Ahmedabad under Sec.437 of the Code of Criminal Procedure and investigating officer was directed to remain present at 4.30 p.m. on the same day if petitioner was required to be further investigated and Inspector was permitted to remain present before the learned Metropolitan Magistrate at his residence as communicated by Dy.S.P., Training, CBI, Gandhinagar and on the same day, application for bail was preferred and same was allowed by the learned Metropolitan Magistrate, Court No.12, Ahmedabad when on the same date another application for cancellation of

bail was pending as petitioner was not remaining present pursuant to summons served on him and it is irrelevant whether the petitioner is released on bail with regard to the second offence. It was further submitted that in view of all these aspects, the bail of the present petitioner was rightly cancelled by the learned Sessions Judge and hence, present revision application be rejected.

5. Heard Mr.J.M.Panchal, learned counsel for the petitioner, Mr.Mukesh R.Shah, learned Addl. Central Govt. Standing Counsel for the respondent No.1 and Mr.I.M.Pandya, learned Addl. Public Prosecutor for the respondent No.2. They have argued the things which they have contended in their pleadings and hence, same are not reproduced here.

6. Mr.J.M.Panchal, learned counsel for the petitioner has mainly argued that previously application for cancellation of the bail preferred by the CBI in the Court of learned Metropolitan Magistrate was not pressed and, hence, second application for cancellation of bail preferred by the CBI in the Court of learned District Court is not maintainable. He has contended that no breach of the conditions has been committed by the present petitioner which necessitates cancellation of his bail. He has also contended that since the investigating agency was knowing all these at the time of investigation of the second offence, they could have opposed bail application at the relevant time. According to him, there is no evidence worth the name to show as to when the petitioner-accused has started his business in Nalanda Towers, it might be prior to the present offence and he was legally using 25 telephone lines which have been sanctioned to him. He has further contended that except bare words and bare allegations, there is no material or evidence to show that in reality the seals were broken by the present petitioner. He has argued that present petitioner had prayed for muddamal in respect of the first offence before the concerned Magistrate and order to that effect for handing over the muddamal and other articles seized by the investigating agency was also passed and since the authorities have not complied with the said order, petition for contempt of Court was filed by the petitioner and, therefore, to come out from this, application for cancellation was filed by the C.B.I.

7. Mr.M.R.Shah, learned Addl. Central Govt. Standing Counsel and Mr.I.M.Pandya, learned Addl. Public Prosecutor for the State have mainly argued that Court

below has dealt with in detail regarding the contentions raised by the learned counsel for the petitioner while deciding Cri.Misc.Appln.No.194 of 2001. Drawing my attention towards para Nos.4 and 5 of the said order, they have argued that Court below has considered all the aspects of the matter including the panchnama and has come to the conclusion that breach of conditions has been committed by the present petitioner and it is a finding of facts based on evidence on record and, therefore, while dealing with the present petition, this Court cannot go into those findings and since no error of law has been committed by the Court below, the order passed by it is not required to be interfered. They have also argued regarding the scope of this petition.

8. I am aware that this Court is dealing with the petition under Sec.397 of the Code of Criminal Procedure and it is a settled law that scope of revisional jurisdiction is limited one and more particularly, the Court below has come to the conclusion based on evidence on record and after considering the panchnama and other documentary evidence that petitioner has misused his liberty by taking away the muddamal articles that have been seized by the C.B.I. by breaking the seals which have been applied by the CBI which have been discussed in detail by the Court below more particularly in para 4.

9. I have gone through the panchnama together with detailed affidavit filed by the Investigation Officer and other evidence which have been shown to me by the learned advocates appearing for the respective parties. It is a finding of facts arrived by the Court below and, therefore, this Court cannot enter into the same. Nevertheless, I have gone through the same and I also share the same view that petitioner has committed breach of conditions by misusing his liberty.

10. A contention was raised by the learned counsel for the petitioner that since the previous petition submitted by the CBI for cancellation of bail was not pressed, subsequent petition for the same purpose cannot be entertained by this Court. However, facts established from the record and proceedings and from the arguments advanced by the learned counsel for the parties are that previous petition for cancellation of bail was not pressed as charge-sheet was submitted at that relevant time and case was committed from the said Court to the Court of Sessions and hence, in my view the said petition was rightly not pressed at that time and rightly preferred application for cancellation before the Special Court. It is to be noted that said point has been argued

by the learned advocate appearing for the petitioner before the Court below and same has been dealt with correctly by the Court below and I do not see any illegality in it.

11. Another contention raised by the learned counsel for the petitioner is that after the first offence was registered, petitioner has submitted one application in the Court of learned Metropolitan Magistrate for custody of muddamal and though same was allowed, muddamal has not been handed over by the I.O. and hence, a Contempt of Court petition was filed against the I.O. Keeping this enmity in mind, application for cancellation of bail was tendered. However, facts established from the record are that above order passed by the Court below ordering to hand over muddamal was stayed by this Court and hence, there is no substance in the said contention.

12. It appears that the petitioner is a habitual offender who has caused huge revenue loss to the Department of Telecommunications to a tune of Rs.13,83,00,000/- in the first offence itself and after being released on bail, he is frequently indulging into same offence taking law in his hands by breaking open the seals applied by the CBI. As argued by the learned counsel for the respondents, petitioner has indulged in the same activity in Mumbai also.

13. Before it is concluded, I would like to state that petitioner, after being released on bail in the first offence, is alleged to have broken open the seals applied on the premises where muddamal articles have been kept by the CBI and taken away some of the muddamals to the nearest building known as Nalanda Towers and also used the same premises again for indulging into the same activity and hence, second offence was registered by the CBI which reflects from the detailed affidavit filed by C.B.I. and also from the panchnama drawn by them and he was not traceable. On 25-12-2000 being a holiday, an application was submitted by the petitioner in R.C.No.30(S)/2000 Gandhinagar for surrendering himself before the Court, true copy of which is at page Nos.111 and 112 of the compilation, On plain reading of said application, it can be seen that neither any advocate nor anybody has identified the present petitioner as the accused of that case. Then also, Court has issued notice to the C.B.I. Gandhinagar in writing asking the investigating officer to remain present at 4.30 p.m. on the same date if petitioner is required to be further investigated by taking him in custody and one Inspector remained present before the learned Metropolitan

Magistrate at his residence. Instead of sending him to custody, detailed application for bail submitted by the petitioner along with various judgments was allowed and petitioner was released on bail by the learned Magistrate after 4.30 p.m. without giving any opportunity to the otherside even to call the advocate. It is true that learned Magistrate can take the person into judicial custody. But when the concerned Magistrate was having charge of bail only for the holiday and also when he was not knowing anything about the offence in question, he ought to have granted time to the C.B.I. to represent their case. This approach of the learned Magistrate will raise several questions in future as to whether it is not the duty of the Court to give opportunity to all concerned i.e. to both the accused as well as the prosecution. Since this point is not before this Court in this matter, I am not discussing further. However, I direct the Registrar, High Court of Gujarat to place the issue before the concerned authority for doing the needful.

14. In view of what has been stated hereinabove, I am of the opinion that since the petitioner has misused his liberty by committing breach of the conditions imposed by the Court below at the time of releasing him on bail, no illegality has been committed by the learned Sessions Judge, Ahmedabad (Rural), Ahmedabad in cancelling the bail order and hence, present revision application is required to be rejected.

15. This Criminal Revision Application is rejected. Notice discharged. Interim relief granted earlier stands vacated. Petitioner is directed to surrender himself in judicial custody.

(R.P.DHOLAKIA,J.)

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FURTHER ORDER

Learned counsel for the petitioner, Mr.J.M.Panchal, requests for stay of the aforesaid order in order to approach the Apex Court. Learned Addl. Central Govt. Standing Counsel for the C.B.I., Mr.Mukesh R. Shah has strong objection. However, facts remain that petitioner was granted interim relief by this Court from 3-10-2001 i.e. the date of issuing the notice and same was continued from time to time and hence, stay is required to be granted. Hence, operation of the above order is stayed for a period of four weeks to enable the petitioner to approach the Apex Court.

(R.P.DHOLAKIA,J.)

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